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First Named Inventor

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Art Unit

3627

Examiner Name

Fischer, Andrew J.

Attorney Docket Number

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**ENCLOSURES** (Check all that apply)

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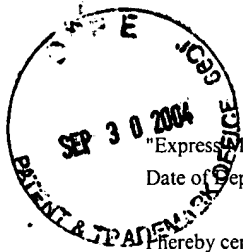
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By: Janet L. Newmaker  
Janet L. Newmaker

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of:

Peter Godlewski et al.

Application No.: 09/624,154

Filed: July 24, 2000

For: SYSTEMS AND METHODS FOR  
PURCHASING, INVOICING AND  
DISTRIBUTING ITEMS

Examiner: Fischer, Andrew J.

Technology Center/Art Unit: 3627

APPELLANT REPLY BRIEF UNDER 37  
CFR §1.193

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
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Sir:

Appellant offer this Reply Brief in response to the Examiner's Answer mailed on August 13, 2004.

It is respectfully believed, after careful consideration of the lengthy Examiner's Answer, that the claims remain patentable for the reasons set forth in the Supplemental Appellant

Brief.<sup>1</sup> In the interest of further focusing the issues in this appeal, Appellants note herein instances where the Examiner's Answer argues positions that rely on unreasonably broad constructions of the claims. *See* MPEP 2111 requiring that claims be given only their broadest *reasonable* interpretation during examination and that that interpretation be consistent with the specification.

In discussing the claim limitation of "electronically sending the ordering information to one or more supplier computers to order items to be restocked into the dispensing units," the Examiner's Answer argues that any input of quantities into a computer falls within the purview of "electronically sending" those quantities to the computer (Examiner's Answer, p. 53, ¶ 110). But the claim already recites "one or more supplier computers," specifying additionally that the mechanism for *sending* the ordering information to them be electronic. Manual entry of information into a computer is not a mechanism of "electronically sending" the information to the computer. Nor is any of verbally communicating the information to another human over a telephone, mailing the information, or having a prior standing contract. Yet the Examiner's Answer takes the position that each of these is a mechanism for "electronically sending" information merely because of the involvement of a computer.

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<sup>1</sup> While Appellants are reluctant also to address an argument that had been been withdrawn, namely the argument captioned "Use of Uncited Material" in the original Appellant's Brief, the Examiner's Answer continues to address the issue and suggests that the understanding on which the argument had been withdrawn is not shared by the Examiner. Examiner's Answer, pp. 63 – 64, ¶¶ 136 – 141. During prosecution, the Office Actions specifically cited certain references and explained how the disclosures of those references were believed by the Examiner to bear on the patentability of the claims. Certain other references were identified as being "made of record [but] not relied upon" (*see, e.g.*, Office Action mailed September 5, 2002, paper no. 9, ¶ 19 and Office Action mailed March 3, 2003, paper no. 14, ¶ 16, *emphasis added*). The Examiner later stressed, and now reiterates in his Answer, that "[a]lthough the Examiner may have singled out various items of evidence (e.g. Sone or Salvo) and expressly noted their content, this does *not* mean that the other documents of record were not considered and applied when making the prior art rejections" (Examiner's Answer, p. 63, ¶ 138, *italicized emphasis in original, underlined emphasis added*).

Appellants are at a loss to understand how references that the Office has specifically identified as "not relied upon" may legitimately have been applied as a basis "to assess ... the patentability of the claimed invention" (*id.*, pp. 64 – 65, ¶ 138) without any specific articulation of how they were applied. Such an approach is plainly inconsistent with the code requirements that "[t]he pertinence of each reference, if not apparent, must be explained" (37 C.F.R. §1.104(c)(2), *emphasis added*), and effectively denies Appellants a fair opportunity to fully consider and respond to the basis for rejection.

Such a construction is clearly outside the scope of the “broadest reasonable interpretation,” which “must also be consistent with the interpretation that those skilled in the art would reach” (MPEP 2111). It strains credibility to assert that those skilled in the art would understand a requirement that information be sent electronically as encompassing a telephone request, a mailed request, or a standing order merely because it was at some time input manually into a computer. Furthermore, such an interpretation is not consistent with the specification, which describes the electronic sending of ordering information as taking place over “a network, such as an internal network, the Internet, an intranet, an extranet, a wireless network, or the like” (Application, p. 10, ll. 16 – 23).

In discussing the claim limitation of “aggregating the restock quantities over the plurality of dispensing units for each of the multiple distinct items,” the Examiner’s Answer takes the position that aggregation is inherent in the way that systems described in Sone or the other references operate. This position improperly fails to distinguish different ways of restocking. The Examiner’s Answer generally agrees that the example provided in the Supplemental Appellant Brief of a possible way for responding to inventory changes in Sone is realistic (Examiner’s Answer, p. 51, ¶ 105). In particular, there is no dispute that one possible way for Sone to operate is “[w]ithout particular regard for which customer is purchasing which products, the store monitor[ing] the inventory level for each product [and] issuing requests to distributors for replenishment when the inventory level falls below a certain level” (Supplemental Appellant Brief, p. 6). Notwithstanding the assertion in the Examiner’s Answer, this is a different way of handling inventory than “aggregating the restock quantities over the plurality of dispensing units.”

The Examiner’s Answer asserts that “if the store[] desires to place an order for 100 units when there are 30 units on hand, the store must inherently aggregate *all* sales” (Examiner’s Answer, p. 51, ¶ 105, emphasis in original). But this is not true. To place such an order, the store merely needs to note how many units are on hand and whether this level is sufficiently low to trigger a reorder request. This is a different operation than aggregating

restock quantities, a reflection in part of the fact that the focus of the store is on its own inventory level rather than on the individual needs of each dispensing unit at the time of ordering.

The absence of this limitation is not at all remedied by the citation of Kawashima under the alternative §103 rejection. It remains unclear precisely how Kawashima is being applied since the Examiner's Answer is inconsistent in its characterization of Kawashima. Using language similar to that cited in the previous Office Action, the Examiner's Answer states that Kawashima "directly discloses aggregating the restock quantities over a plurality of dispensing units for each of the multiple distinct items," and refers to the order slip shown in Fig. 12 of Kawashima (*id.*, p. 55, ¶ 115, emphasis added; *see* ¶ 114 citing language from the previous Office Action). But then the Examiner's Answer appears to recant by stating that "the Examiner has never relied entirely on Kawashima for showing aggregating restock [*sic*] quantities over a plurality [*sic*] of dispensing units," (*id.*, p. 56, ¶ 118), acknowledging that it is "self-evident that Kawashima does not disclose a plurality of dispensing units" (*id.*, p. 56, ¶ 118). In light of the specific language of the claim limitation requiring "aggregating the restock quantities over the plurality of dispensing units for each of the multiple distinct items," the reliance on Kawashima only "for showing 'aggregating restock [*sic*] quantities' for each of the items to be resocked [*sic*]" (*id.*, p. 56, ¶ 118) is not well founded.

This is evident from the two examples cited in the Examiner's Answer. The order slip of Fig. 12 of Kawashima (*id.*, p. 55, ¶ 115) merely shows values to be ordered and neither teaches nor suggests how those values were determined. The language cited in ¶ 116 of the Examiner's Answer is related to a "calculation of sales volume prediction" that averages past sales volumes on a particular day of the week (Kawashima, Col. 4, ll. 12 – 30). If such averaging entails aggregation as the Examiner's Answer asserts (Examiner's Answer, p. 55, ¶ 117), it is aggregation over different *days*, a computation different from what is claimed.

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September 29, 2004

PATENT

For at least these reasons, Appellants continue to believe that all pending claims are patentable.

Respectfully submitted,



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